Involuntary Treatment—Its Legal Limitations*

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The "right to freedom from psychosis," as enunciated by Rachlin,[2] is, in essence, an extension of the police power of the state to protect the general health and welfare of its citizens. As such, it must be subject to constitutional and legal limitations. If one accepts the legitimacy of involuntary hospitalization,[3] treatment must also be provided, since forced hospitalization without treatment, when treatment exists for the mental condition sanctioning hospitalization, would be pure imprisonment which cannot be justified absent a criminal act.[4] Indeed, one of the most basic rights of an involuntarily hospitalized patient is the right to receive treatment for the mental illness or mental disability which is the basis for the hospitalization.[5] To the fullest extent possible, such treatment should be reasonably calculated to lead to improvement and termination of the need for involuntary confinement.

Recent lawsuits have brought to light the grave abuses that have been visited upon involuntarily hospitalized patients who, although deprived of liberty, have not received proper treatment.[6] Thus it is imperative to scrutinize carefully the quality of treatment to be provided an involuntary patient before involuntary hospitalization can even begin to be considered.

Although in a system that sanctions involuntary hospitalization involuntary treatment should be a concomitant, the use and extent of such treatment involve certain limitations which must be observed by providers of psychiatric services. A discussion of the restrictions on administration of involuntary treatment follows.

Legal Limitations on Involuntary Treatment

At the outset, it must be emphasized that patients have a right to be treated at all times in a humane manner and with dignity and respect for their personal and bodily integrity. Any treatment afforded must be administered subject to this fundamental requirement.

In many states patients are admitted involuntarily to psychiatric facilities without the benefit of a court hearing prior to admission. Such admission may be based upon a physician's allegation of need for hospitalization. If an objection to involuntary hospitalization or involuntary treatment is raised, such patients must not be considered true involuntary patients nor subjected to treatment against their will until such time as they are afforded an opportunity to test, at a court hearing, the validity of the allegation that they are in need of involuntary hospitalization.[7] Their refusal to receive medication must be respected, since the possibility exists that a court may find that they do not meet the criteria for involuntary hospitalization and may order them discharged from custody. Prompt court hearings following involuntary hospitalization would alleviate many of the problems that may arise during this waiting period and would either afford a

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person who need not be involuntarily hospitalized a speedy discharge or permit involuntary treatment to begin expeditiously. A limited exception may exist to allow a hospital to administer involuntary treatment to an unwilling patient during the period prior to court hearing if such treatment is necessary to save the life of the patient or others or to prevent serious harm to the patient or others, but the hospital would be assuming the risk of a later claim of battery if the patient were to decide to bring suit against the hospital and such treatment were proven to be unjustified by these standards.

The requirement that treatment be administered with dignity and respect may well include an attempt at explanation of the proposed best treatment and a discussion of alternative treatments, including the beneficial and adverse consequences of each. To as full an extent as permitted by the patient's condition, he should be allowed to participate actively in devising a treatment plan suited to his individual needs. It would seem that patient participation may promote a therapeutic relationship between the patient and therapist and may lead to a more rapid attainment of mutually desired ends. Should a patient object to a particular form of medication or therapy, his objections should be considered and possible alternatives employed.

Certain other limitations are placed on the administration of involuntary treatment. In *Wyatt v. Stickney,* the Alabama "right to treatment" companion cases brought on behalf of the mentally ill[8] and mentally retarded,[9] the court imposed restrictions on use of medication. The court found that patients have a right to be free from unnecessary or excessive medication and that medication cannot be used as punishment, as a substitute for a treatment program, or in a way that would interfere with a treatment program. The court required a physician's written order for administration of any medication and weekly review by the physician of the drug regimen.

These cases also led to another treatment requirement: the individualized treatment plan. This required a statement of the specific problems and needs of the individual patient, a description of both intermediate and long-range treatment goals with a stated rationale for such goals and a projected time table for attaining them, a statement of staff responsibility, notation of any therapeutic tasks and labor to be performed by the patient, a statement of the least restrictive treatment conditions necessary to achieve the purposes of commitment, the criteria for release to less restrictive treatment conditions, criteria for discharge, and an individualized post-hospitalization plan.

The doctrine of least restrictive alternative merits further attention. This doctrine, of constitutional dimensions, means that a state cannot deprive an individual of his liberty to a greater extent than necessary to serve a legitimate governmental purpose. Thus if involuntary hospitalization is seen as a legitimate exercise of the power of the state to protect the health and welfare of its citizens, such hospitalization should be permitted to occur only if no less restrictive alternatives exist sufficient to accomplish the purpose of treating the mentally disabled person. This doctrine has been applied to determine whether an individual should be hospitalized at all,[10] in what type of facility he should be hospitalized,[11] or in what type of treatment ward within a facility.[12] It has also been extended by *Wyatt v. Stickney* to involuntary treatment to require that before more drastic treatment measures are administered, less drastic alternatives must first be attempted.

Treatment of a more drastic or experimental nature requires the express consent of the patient. Such treatments would include shock therapy, surgery, certain forms of behavior modification, use of experimental drugs, and psychosurgery. Even though a person may meet the criteria for involuntary hospitalization, it does not necessarily follow that such person lacks the capacity to make his own decisions with regard to these forms of more extreme treatment. In fact, the patient should be presumed competent for the purpose of objecting to these forms of treatment, unless determined at a court hearing to be incompetent to render the specific decision.

In *New York City Health and Hospital Corporation v. Stein,*[13] the Court found that even though a patient was in need of further involuntary hospitalization, she could not

be considered incompetent for the purpose of consenting to shock therapy. She was able to understand the procedures involved and the potential adverse consequences if she refused this treatment. Even though the court did not necessarily agree with the patient's decision and even though she may have decided to reject the treatment of choice, her decision would be abided by because her lack of competence to make such decisions was not proven to the satisfaction of the court.

Additional restrictions are imposed on involuntary treatment of mentally disabled patients. The First Amendment provides for religious freedom for all. Persons who object to treatment on religious grounds have a right to have their religious principles respected, and the issue of whether treatment may be involuntarily imposed upon them in the face of religious objections must be determined by a court. In making its determination the court should examine the religious claim and balance the state's interest in providing involuntary treatment against the individual patient's right to religious freedom. Because of the primacy of First Amendment freedoms, however, great weight is given the free exercise of religion in the balancing test. Religious freedom is "susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect."[14] Those cases in which religious liberty may be restricted are those in which it can be shown that a "clear interest, either on the part of society as a whole or at least in relation to a third party . . . would be substantially affected by permitting the individual to assert what he claimed to be 'free exercise' rights."[15] The Court in the *Winters* case was clearly suggesting that it was unlikely that forcing an individual patient to receive medication in violation of her religious beliefs would be countenanced under these protective standards.

One further aspect of involuntary treatment merits attention. At least one court has ruled that certain forms of treatment may never be imposed upon involuntary patients even despite apparent willingness of the patient to undergo such treatment. In *Kaimowitz v. Michigan Department of Mental Health*,[16] the Court determined that under no circumstances could an involuntary patient consent to psychosurgery. Two concerns of the court which led to this determination were a) the lack of evidence that such procedure could result in substantial benefit to the patient, although severe risks would be posed, and b) the inability of an institutionalized patient to consent to psychosurgery because: i) institutionalization strips him of his sense of self-worth and value of his physical and mental integrity; ii) knowledge of the risks involved in the contemplated procedure could not be possible because of its extreme uncertainty; iii) lack of freedom places patients in an inherently unequal position with respect to the doctors who offer such treatment to them, making it difficult for them to refuse. Similarly, the issue of whether convicted child molesters confronted with life imprisonment could voluntarily consent to castration operations in the hope of securing release has recently been raised.[17] These questions are still far from being conclusively resolved.

Conclusion

It would therefore appear that the "right" to a better quality of life through involuntary treatment is not really a right at all but rather a tolerated infringement on the fundamental right to liberty. This infringement must be justified, generally in a court of law, as a legitimate intervention to protect the public health and welfare. It will be carefully scrutinized to insure that the patient being subjected to involuntary treatment is in need of involuntary hospitalization, that the infringement is the least restrictive treatment alternative consistent with treatment needs, that he lacks the capacity to make decisions involving more severe forms of treatment, and that proper treatment is in fact being provided. Involuntary treatment will be disallowed in most instances in the face of valid religious beliefs.

The presence of mental illness or other mental disability, therefore, does not, in itself,

set persons apart from other members of society for the purpose of improving the quality of their lives against their will. People have the freedom to, and do in fact, engage in behavior that may adversely affect their quality of life, including overeating, smoking, or living in air-polluted cities. Indeed, courts have even permitted individuals to refuse life-saving medical and surgical procedures.[18]

Our society permits these choices despite known detrimental consequences because of the high value placed upon individual liberty and freedom of choice. No less freedom may be permitted a mentally disabled person absent a clear showing in a judicial proceeding that his or her judgmental process is so impaired that a competent decision regarding treatment cannnot be rendered.[19]

References

1. The views expressed herein are those of the author and do not necessarily reflect the policies of the Mental Health Information Service
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3. For one of the more comprehensive statements against the use of involuntary hospitalization, care and treatment, see Szasz T: The myth of mental illness. Am Psychol 15:113, 1960. Also see Szasz T: Law, Liberty and Psychiatry. Macmillan, 1963
4. The Supreme Court has yet to rule directly on the issue of right to treatment. O'Connor v Donaldson, 422 US 563 (1975). A right to treatment may be implied in Robinson v California, 370 US 660 (1962), wherein the Supreme Court considered it fundamental that a mentally ill person could not be imprisoned for his mental illness but might be confined for the purposes of compulsory treatment. 370 US at 666-667
5. Wyatt v Stickney, 325 F Supp 781 (MD Ala 1971), hearing ordered 334 F Supp 1341 (MD Ala 1971), enforced 344 F Supp 373 (MD Ala 1972) aff'd sub nom Wyatt v Aderholt, 503 F 2d 1305 (5th Cir 1974); see also Birnbaum M: The right to treatment. Am Bar Assoc J, 46:499-505, 1960
6. Wyatt v Stickney, supra, O'Connor v Donaldson, supra; New York Association for Retarded Children v Rockefeller, 357 F Supp 752 (EDNY 1973)
7. Winters v Miller, 446 F 2d 65 (2d Cir), cert denied, 404 US 985 (1971); Bell v Wayne County General Hospital at Eloise, 384 F Supp 1085 (ED Mich 1974)
8. 344 F Supp 373 (MD Ala 1972)
9. 344 F Supp 387 (MD Ala 1972)
10. Lake v Cameron, 364 F 2d 657 (DC Cir 1966); New York Mental Hygiene Law§§31.01, 31.27 (d)
11. Kesselbrenner v Anonymous, 33 NY 2d 161, 305 NE 2d 903, 350 NYS 2d 889 (1973)
12. Covington v Harris, 419 F 2d 617 (DC Cir 1969)
13. 70 Misc 2d 944, 335 NYS 2d 461 (1972)
14. West Virginia State Board of Education v Barnette, 319 US 624, 639 (1943)
15. Winters v Miller, supra at 70
16. Unreported, Cir Ct Wayne Co, Mich (1973)
17. The New York Times, May 6, 1975, p 22, col 4, reporting on two cases of patients at Atascadero State Mental Hospital, California
18. In re Estate of Brooks, 32 Ill 2d 361, 205 NE 2d 435 (1965)
19. This position has been adopted recently by the American Psychiatric Association, Psychiatric News, X 14: 1, col 1, July 16, 1975